MEMORANDUM

To: Commissioners, Will, Kate, Laura, Justin, Mike, Aleisha, Mandi
From: Gary
RE: March 17, 2015 Work Session – CenturyLink QC Motion for Reconsideration of PSC Order No. 7388a.

On February 9, 2015 CenturyLink QC filed a Motion for Reconsideration of the Commission's decision in Order No. 7388a and grant CenturyLink QC's December 3, 2014 Motion for Protective Order.

Background

On December 4, 2014 CenturyLink QC filed a Motion for Protective Order in Docket No. D2014.11.91 – CenturyLink QC Quality of Service. CenturyLink QC was seeking to protect certain information to be filed as a response to PSC data request PSC-001. The Commission denied the Motion in Order No. 7388a on January 21, 2015. The information which CenturyLink wished to protect was detailed information regarding how CenturyLink had spent its 2013 and 2014 Frozen High Cost Support (FHCS). The staff analysis and recommendation to deny the Motion were explained in a staff Memorandum dated January 14, 2015. In making the recommendation to deny the Motion, staff relied on language regarding the use of FHCS from the November 18, 2011 FCC Transformation Order No, 11-161. Specifically, the Order stated as follows:

> ¶150. Specifically, in 2013, all carriers receiving frozen high-cost support must use at least one-third of that support to build and operate broadband-capable networks used to offer the provider's own retail broadband service **<u>in areas substantially unserved by an unsubsidized competitor</u>**. For 2014, at least two-thirds of the frozen high-cost support must be used in such fashion, and for 2015 and subsequent years, all of the frozen high-cost support must be spent in such fashion. Carriers will be required to certify that they have spent frozen high-cost support consistent with these requirements in their annual filings pursuant to new section 54.313 of our rules.

Based on ¶150, staff produced the following analysis and recommendation

> <u>January 14, 2015 Memorandum - Staff Analysis and Recommendation</u>
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> The FCC, in its Transformation Order, noted that 83% of rural customers without access to broadband were in price cap carrier (such as CenturyLink QC) territory. Price cap carriers were treated differently that rural rate-of-return carriers in the order. Specifically, the FCC stated that they wanted to make funds available to price cap carriers to serve customers located in unserved areas. Unserved areas in price cap territory are typically rural high cost locations that are uneconomic to serve. That is why the FCC directed an increasing percentage of FHCS to <u>areas substantially unserved by an unsubsidized competitor</u>. Thus, the areas in which CenturyLink is supposed to be making broadband investments using USF high-cost support are areas expensive to serve with little or no competition. The reason there is no competition is because these are high-cost locations and no broadband provider is going to deploy to those areas without a subsidy. Therefore, the arguments presented by CenturyLink that its available broadband speeds and project level capital expenditures would give a competitive advantage to its

competitors are specious. If the investments made by CenturyLink are truly in unserved areas then there should be no unsubsidized competitors serving those areas that could gain a competitive advantage. Staff recommends denying the Motion for Protective Order.

CenturyLink QC Motion for Reconsideration

In its December 4, 2014 Motion for Protective Order CenturyLink QC had requested protection for Exhibits 4 and 5 of its response to DR PSC-001. Exhibit 4 displayed broadband download speeds in specific census blocks. Exhibit 5 shows capital expenditures, including CAF Phase I Incremental Support Copay, for exchanges where over 60% of the exchange is substantially unserved by an unsubsidized competitor. Exhibit 5 provides, for each exchange the specific geographic location of each equipment upgrade, the reason for the upgrade and the specific dollar amount of the capital expenditure. The Commission denied protection for both Exhibits in Order No. 7388a. In its Motion for Reconsideration, CenturyLink QC is only requesting protection for Exhibit 5. CenturyLink QC states the information in Exhibit 4 has been provided to the National Telecommunications and Information Administration (NTIA) on a public basis and is, therefore, not proprietary.

CenturyLink first argues that there is not sufficient evidence in the record to conclude, with respect to each of the areas for which the information on Exhibit 5 is requested, that there are no competitors present. They state that while it may be true that some areas do not currently have a competitive service offering, it cannot be said which areas are subject to competition and which are not. CenturyLink argues that the telecommunications industry in Montana is highly competitive and possession of the Information for which protection is sought would give CenturyLink's competitors a detailed geographic and project-level view of CenturyLink investments and expenditures related to broadband deployment in Montana the data would provide competitors with a distinct competitive advantage.

CenturyLink asserts the use of FHCS, as ordered in ¶150 above of the Transformation Order, was substantially modified in DA 13-2101, an Order Adopted and Released October 30, 2013 by the Chief, Wireline Competition Bureau. DA 13-2101 stated as follows:

> ¶10. Under the Act, universal service support is intended for the provision, maintenance, and upgrading of facilities and services. Historically, ETCs have used universal service support to recover costs previously incurred for network investment and ongoing operation and maintenance of those facilities. Moreover, as the Commission recognized in the *USF/ICC Transformation Order*, under the long-standing "no barriers" policy, it has been permissible for more than a decade to use universal service support for mixed-use facilities that can deliver both voice and broadband services, such as the extension of fiber closer to end-user premises or annual maintenance of such fiber. <u>Therefore, consistent with long-standing Commission policy, we take this opportunity to restate that carriers may use their frozen high-cost support either to recover the costs of past network upgrades to extend broadband-capable networks in areas substantially unserved by an unsubsidized competitor, or to maintain and operate existing networks in such areas, or a combination of the two.</u> Price cap carriers are not required to use one-third of their frozen support for new capital investment occurring in 2013. The Commission recognized that there are significant ongoing costs for carriers maintaining a dual-use network, and therefore there is significant value in permitting carriers to use frozen high-

> cost support to cover the operating expenditures necessary to maintain such networks that have been constructed prior to the adoption of the *USF/ICC Transformation Order*, rather than just utilizing frozen high-cost support solely to cover the operating expenditures necessary to maintain networks that are newly built.
>
> ¶11. ……………We clarify that: (1) price cap carriers must continue to use all frozen high-cost support within the study area for which it is currently provided, and (2) price cap carriers must be prepared to produce documentation upon request, in the course of an audit or other inquiry, identifying the states and study areas where they are fulfilling the section 54.313(c) broadband obligation, and associated dollar amounts.

CenturyLink states in its Motion that the exchange level capital investment data in Exhibit 5 includes not just geographic areas the FCC deems unserved by an unsubsidized competitor. It also includes all locations in Montana where CenturyLink QC has construction projects in exchanges that are at least 60% unserved by an unsubsidized competitor. In a follow up question from staff to CenturyLink, staff requested CenturyLink QC explain the 60%. The response from Robert Brigham (the signee of the Affidavit accompanying the Motion for Reconsideration) was as follows:

> 2. As for the 60%, in the Transformation Order (FCC 11-161), the FCC defined a requirement is to spend in areas "substantially un-served by an unsubsidized competitor." The question then becomes: what is the definition of "areas substantially un-served?" We have concluded based, on the FCC Transformation order, that "substantially" means more than not, which would mean we count areas where we do not have an unsubsidized competitor in at least 50% or our area (area being at the census block level). The FCC has recognized that certain investments can benefit a geographic area which include census blocks where there is competition and where there is not. The FCC did not want to preclude such investment from being counted towards frozen support spend as long as the 50% threshold was met (See attached order, paragraph 149 and footnote 238). We do not track investment at the census block level and therefore for the purposes of responding to this data request, we defined capital spend area at the wire-center/exchange level. There were no wire centers with coverage between 50% and 59% and therefore as a practical matter we started at 60% coverage (we did have one wire center at 59.3% coverage and we picked it up by rounding up).

Paragraph 149 and footnote 208 of the FCC November 18, 2011 Transformation Order referenced in the Brigham response state as follows:

> ¶149. CAF Phase I will also begin the process of transitioning all federal high-cost support to price cap carriers to supporting modern communications networks capable of supporting voice and broadband in areas without an unsubsidized competitor. Effective January 1, 2012, we require carriers to use their frozen high-cost support in a manner consistent with achieving universal availability of voice and broadband. If CAF Phase II has not been implemented to go into effect on or before January 1, 2013, we will phase in a requirement that carriers use such support for building and operating broadband-

capable networks used to offer their own retail service in areas substantially unserved by an unsubsidized competitor. [238]

Footnote 238 - Support should be used to further the goal of universal voice and broadband, and not to subsidize competition in areas where an unsubsidized competitor is providing service. However, we recognize that certain expenditures, such as investments in a digital subscriber line access multiplexer (DSLAM) and/or middle mile infrastructure, that benefit a geographic area unserved by an unsubsidized competitor may also benefit some locations where an unsubsidized competitor provides service. We do not intend to preclude such investments. While we expect CAF recipients to use support in areas without an unsubsidized competitor, to the extent support is used to serve any geographic area that is partially served by an unsubsidized competitor, the recipient must certify that, with respect to the frozen high-cost support dollars subject to this obligation, at least 50 percent of the locations served are in census blocks shown as unserved by an unsubsidized competitor, as shown on the National Broadband Map. For example, if a given middle mile feeder for which frozen high-cost support dollars are used serves 100 locations, and only 40 of those locations are in census blocks shown as unserved by an unsubsidized competitor on the National Broadband Map, the recipient would not be in compliance with this requirement. For purposes of determining whether this requirement is met, carriers must be prepared to provide asset records demonstrating the existence of facilities, such as a DSLAM and/or middle mile plant that serve locations in census blocks where there is no unsubsidized competitor.

In the Affidavit of Bob Brigham, he asserts that the geographic areas identified in Exhibit 5 are not free of current competitors as the Commission has assumed. The bulk of the data in Exhibit 5 shows capital expenditures in exchanges where 60% - 100% of the exchange is substantially unserved by an unsubsidized competitor." Thus, these areas often have competitors serving a portion of the exchange, and competitors may in fact be serving the specific area where a CenturyLink capital expenditure has been made. Only the CAF 1 capital expenditures identified in Exhibit 5 have been made in areas that are defined as currently unserved by an "unsubsidized competitor" as defined by the FCC. However, even in these areas, as noted in CenturyLink's *Motion*, there may be providers offering competitive services that do not meet the FCC's specific CAF criteria. For example, a competitor that offers High Speed Internet (HIS) service below 4 mbps downstream would not be considered an unsubsidized competitor.

Brigham further argues that even if there is no competitor currently serving a specific geographic area, that does not mean that the area is not subject to competition, or that possession of the data in Exhibit 5 would not provide a competitive advantage to CenturyLink's competitors. He further states that by definition, as a competitor expands its geographic reach, it will serve areas that it did not previously serve, i.e., an unserved area and that detailed information regarding CenturyLink's network is valuable even in areas not currently served by the competitor. In many cases, an area that is unserved today may be under evaluation by a competitor, and may be served in the future

Brigham asserts that it also must be recognized that competitors serve high cost areas today, and will continue to do so in the future. He states, for example, many high cost areas in Montana are served by Fixed Wireless providers today. This is the reason why federal CAF II dollars will not be available in many high cost rural areas in Montana; these areas are served by an unsubsidized Fixed Wireless competitor. Detailed network location and expenditure information as provided in Exhibit 5 would be very helpful to a Fixed Wireless provider seeking to define specific geographic areas for expansion or facility upgrade.

Brigham closes his arguments by stating that the information in Exhibit 5 is granular, location –specific data showing where CenturyLink QC has upgraded its HIS capability which would allow competitors to plan their networks to more effectively compete with CenturyLink QC for customers. In addition, Brigham argues that Exhibit 5 shows the exact location of CenturyLink HIS facilities and public disclosure of this information could make the equipment subject to theft, vandalism, or sabotage.

Summary of CenturyLink QC Response to PSC DR-001 and Arguments (see Attachment I to this memorandum for a copy of PSC DR – 001.

In its response to PSC-001 CenturyLink QC states as follows:

> "CenturyLink received $9,789,060 in frozen high cost support in 2013 and $6,476,398 in frozen high cost support through August of 2014. One-third or $3,263,020 in 2013 and two-thirds or $4,317,599 through August of 2014 of the frozen support was required to be spent for **building, operating, or maintaining** voice and broadband capable networks In areas that were substantially unserved by an unsubsidized competitor. CenturyLink incurred expenses and invested amounts in facilities that far exceeded the required obligation in both 2013 and so far in 2014."

CenturyLink QC asserts that FCC Order DA 13-210, ¶10 eliminated the Transformation Order requirement that 1/3 of 2013 FHCS and in 2013, and 2/3 in 2014, had to be spent to in areas substantially unserved by an unsubsidized competitor. Rather FHCS support could be spent either to recover the costs of past network upgrades to extend broadband-capable networks in areas substantially unserved by an unsubsidized competitor, **or to maintain and operate existing networks** in such areas, or a combination of the two. This can be seen in the CenturyLink QC responses to DR PSC-001 Exhibits 1, 2, and 3 where it asserts that the "supported expenses" it incurred were $139.6 million in 2013 and $93.3 million in the period Jan-Aug, 2014 versus FHCS of $9.8 million and $6.5 million for the same time periods.

Exhibit 1	2013	Jan.-Aug. 2014
Frozen High Cost Support (FHCS)	$9,789,060	$6,476,398
"Supported Expenses"	$116,003,367	$83,217,143
Additions	$23,590,737	$10,097,013
Total Supported Expenditures	$139,594,104	$93,314,156
FHCS as % of Supported Expenditures	7.01%	6.94%

Exhibit 2		
Operating Expenses Associated with dual use Broadband capable networks	$87,747,438	$55,841,599

Operating Expenses Associated with dual use Broadband capable network in areas Substantially unserved by an unsubsidized Competitor	2013	Jan.-Aug. 2014
	$16,377,142	$10,422,251

Shown below is CenturyLink QC's Exhibit 3 in response to DR PSC-001.

Exhibit 3

Qwest Corporation d/b/a CenturyLink QC (Montana)

	2013	Jan-Aug 2014
Total Capital Expenditures	25,309,386	10,097,013
Capital Expenditures Associated with broadband capable network	15,596,157	8,204,997
Capital Expenditures Associated with broadband capable network * in areas where 90% - 100% of the exchange is substantially unserved by an unsubsidized competitor	270,334	112,366
Capital Expenditures Associated with broadband capable network * in areas where 60% - 89% of the exchange is substantially unserved by an unsubsidized competitor	282,918	61,870
Subtotal	553,252	174,236
CAF Phase 1 Round 1 Incremental Support Company Copay	394,881	62,053
Total of Broadband capable network expenditures in areas where 60% and above of the exchange is substantially unserved by an unsubsidized competitor	948,133	236,289

Note:
Capital expenditures and Operating expenses combined allowed Qwest Corporation d/b/a CenturyLink QC (Montana) to meet its obligation to spend a specific portion of its frozen high cost support in areas substantially unserved by an unsubsidized competitor.

* Capital expenditures reported at an exchange level.

Exhibit 3 shows the amount of capital expenditures by CenturyLink QC in areas where 90%-100% of the exchange is substantially unserved by an unsubsidized competitor, capital expenditures in areas where 60% to 89% of the exchange is substantially unserved by an unsubsidized competitor, and CAF Phase I Round I Incremental Support Company Copay capital expenditures made in areas that are currently defined as unserved by an unsubsidized competitor by the FCC. (CAF Phase I Round 1 Incremental Support Company Co-pay is CenturyLink QC's expenditure on projects that have enabled broadband service availability to un-served areas (locations) in excess of the FCC CAF Phase I Incremental Support the Company received for those locations.) Utilizing the numbers from Exhibits 1 & 3, staff developed the following table:

	CenturyLink QC Use of FHCS and CAF Copay		
			Jan.-Aug.
		2013	2014
1	Frozen High Cost Support	$9,789,060	$6,476,398
2	Broadband CAP X in exchanges 90-100% unserved	$270,334	$112,366
3	Broadband CAP X in exchanges 60-89% unserved	$282,918	$61,870
4	CTL CAF Copay in unserved exchanges	$394,881	$62,053
5	Total CAP X in exchanges substantially unserved/unserved (Lns 1-3)	$948,133	$236,289
6	FHCS less CAP X (ln 1 minus ln 5)*	$8,840,927	$6,240,109
	* CenturyLink states Line 6 amounts were used to recover the		
	costs of past network upgrades to extend broadband capable		
	networks in areas substantially unserved by an unsubsidized		
	competitior,or to maintain and operate existing networks		
	in such areas, or a combination of the two, per		
	October 30, 2013 FCC DA 13-2101, ¶10		

CenturyLink Exhibit 5, which it is asking to protect, shows the amounts in lines 2 through 4 broken down by project by exchange with the total of the exchange investments equaling line 5.

Analysis and Recommendation

CenturyLink QC argues the Exhibit 5 information should be protected for two reasons. First they assert competitors could use the granular network investment information for competitive advantage. Second, Exhibit 5 shows the exact location of CenturyLink HIS facilities and public disclosure of this information could make the equipment subject to theft, vandalism, or sabotage.

Competition - Regarding the competitive argument, the Commission has protected granular geographic information regarding network investments funded by USF High-Cost Support in areas in which the applicant has shown there is competition (see N2014.4.45, Order No. 7357e, Order on Reconsideration on Blackfoot Communications Motion for Reconsideration). Conversely, where there has been no convincing argument regarding the presence of competition, the Commission has taken the position that information regarding the expenditures of USF High-Cost support should be transparent and available to the public (see Docket No. D2013.11.80, Order No. 7319 Denying Commnet Wireless LLC's Motion for Protective Order.)

CenturyLink has categorized its exchange network investments on Exhibit 5 into three categories: exchanges which are not served as defined by the FCC, exchanges that are 90-100% unserved (or 0 – 10% served), and exchanges that are 60-89% unserved (or 21-40% served).

Regarding the exchanges where investments were made with CenturyLink QC CAF Phase I Round I Incremental Support Company Copay, CenturyLink acknowledges those areas are currently defined as unserved by an unsubsidized competitor by the FCC. CenturyLink does argue in its motion that that there is no basis to conclude that there is not competition in those areas because there may be providers competing with CenturyLink. CenturyLink asserts that there may be providers in an area who are offering HIS that is below 4 Mbps which is the FCC standard to be considered an unsubsidized competitor. Conversely, CenturyLink QC offers no evidence that there is such competition. Staff recommends this Commission should use the FCC standard that is used to offer CAF funding to price cap carriers. That is, if there is not a competitor offering at least 4 Mbps down speed, then the area is unserved and funding will be available to the price cap carrier. Staff recommends that the Commission should find the exchange areas listed on Exhibit 5, where CenturyLink QC made investments utilizing CenturyLink QC CAF Phase I Round I Incremental Support Company Copay funding, are unserved.

CenturyLink QC also asks to protect the exchange area investment detail in exchange areas that are 60% or more substantially unserved. CenturyLink QC utilized the National Broadband Map in making its percent unserved analysis for each exchange which shows at the census block level whether that census block is served or unserved. Staff recommended relying on the FCC determination as to what is an unserved area in the above analysis of the exchange areas where investments were made utilizing CAF Phase I Round I Incremental Support Company Copay funds. For consistency sake, staff recommends again relying on the FCC determination and find that there is competition present in the exchange areas that are more than 60% unserved.

Based strictly on the presence of competition as the reason to protect the Exhibit 5 exchange area information, the information regarding the exchange network investment information funded by CenturyLink QC CAF Phase I Round I Incremental Support Company Copay, should not be granted protection. The exchange network information in the exchange areas where 60% or more of the exchange is unserved should be protected.

Network Security

Brigham, in his Affidavit, states that Exhibit 5 provides the specific geographic location of each equipment upgrade, the reason for the upgrade and the specific dollar amount of the capital expenditure. For example, these data shows the actual dollar amount for a capital expenditure at a specific cross-box location, along with the cross-box address. CenturyLink QC asserts the exact location of CenturyLink HIS facilities and public disclosure of this information could make the equipment subject to theft, vandalism, or sabotage.

Summary

Staff recommends granting protection for the exchange area information for those exchanges that are 60% or more unserved. Staff recommends that the exchange area information funded by CenturyLink QC CAF Phase I Round I Incremental Support Company Copay, should not be protected. However, recognizing the Network Security issue, staff recommends that the public copy of that information should have the location information redacted.

<u>ATTACHMENT I</u>